Aside from a few *dicta*,[8] the decisions apparently opposed to this view are distinguishable. A state may try a person criminally for a violation of its laws, though he was illegally and against his will brought within its jurisdiction from another state, unless that state objects on the ground of some treaty right.[9] Here, however, though there might be some question whether the court ought to take jurisdiction,[10] there can be no doubt that the sovereign has complete power over the person of the defendant, and that by violating its laws he has subjected himself to the risk of punishment in such a contingency. It is more difficult consistently to explain the well-recognized power of prize courts to pass title to captured vessels good against the whole world.[11] But on theory it would seem that when a vessel is sent to sea in time of war, its owner takes the risk of its capture, and in that case, for his own protection, impliedly submits the determination of his rights to a court which is recognized by the law of nations to have jurisdiction.[12]

CORPORATE SURETYSHIP AS A BRANCH OF INSURANCE. — The advent of the modern surety company has produced a series of decisions in which it has been repeatedly asserted that contracts entered into by these corporations for the purposes of gain are to be regarded as insurance policies, and governed by the law applicable thereto, rather than by the specialized body of doctrine embraced in the law of suretyship and guaranty.[1] In view of the comparatively recent origin of this business, the decisions are few which show more than a general tendency to treat the bond or policy of a surety company as subject to different rules than those governing the contract of a private surety. Yet in several important respects this tendency is very marked.

Of growing significance are the decisions that surety companies must comply with the insurance laws governing incorporation [2] and the right to do business.[3] Similarly, the right of a corporate surety to make its own contract is abridged by enactments declaring that no breach of

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is weakened by the fact that the creditor is usually instrumental in getting the property into the jurisdiction, so that the general rule would apply, that an attachment based on possession illegally obtained is void. See Ilsley *v.* Nichols, 12 Pick. (Mass.) 270; Closson *v.* Morrison, 47 N. H. 482.

[8] See Cammell *v.* Sewell, 5 H. & N. 728; Alcock *v.* Smith, [1892] 1 Ch. 238, 267.

[9] Pettibone *v.* Nichols, 203 U. S. 192; *Ex parte* Scott, 9 B. & C. 446.

[10] Where the defendant is enticed into the state by fraud so as to be served with process in a civil proceeding, the court will not take jurisdiction. State *v.* Yauger, 29 N. J. L. 384. As to privilege of non-resident parties and witnesses from service of process, see 23 HARV. L. REV. 474.

[11] See Hughes *v.* Cornelius, 2 Show. 232; The Richmond *v.* United States, 9 Cranch (U. S.) 102; Grant *v.* M'Lachlin, 4 Johns. (N. Y.) 34.

[12] A vessel in port in time of peace is generally there with the owner's consent, so there is no difficulty in supporting the ordinary doctrine of admiralty jurisdiction. But in an international reference it was decided, in accord with the theory of this note, that where a vessel was taken to Nassau by a mutinous crew against the owner's consent, there was no jurisdiction to free the slaves on board. See WHEATON, INTERNATIONAL LAW, 6 ed., cxxxi (The Creole).

[1] See Bank of Tarboro *v.* Fidelity & Deposit Co., 128 N. C. 366; American Surety Co. *v.* Pauly, 170 U. S. 133.

[2] People *v.* Rose, 174 Ill. 310.

[3] Claflin *v.* U. S. Credit System Co., 165 Mass. 501.

warranty shall render an insurance policy void unless the fact warranted be material.[4] On the other hand, it is well settled that there must be actual fraud to render the contract of a private surety voidable for concealment or misrepresentation;[5] but a contract of guaranty insurance is one of the greatest good faith, and is rendered voidable by an innocent non-disclosure or misrepresentation.[6]

A further distinction has been made between the obligation of a corporate and private surety. The latter is a favorite of the law and his contract is *strictissimi juris*. The slightest alteration of his principal's obligation or duties, whether for better or for worse, will discharge him from all liability.[7] Yet, though the contract of a surety company be in form and substance the same as that of a private surety, it may not avail itself of this defense,[8] unless there be a considerable change or substitution in the principal's contract.[9] However just this result may be, the reasoning of many courts does not put the matter on a satisfactory basis. It is said that this is a contract of insurance and must be construed strictly against the insurer, that the purpose of the agreement, namely indemnity to the insured, may be carried out: hence the rule of *strictissimi juris* would defeat the object of the policy.[10] To this effect is the recent case of *Hormel & Co.* v. *American Bonding Co.*, 128 N. W. 12 (Minn.).

The objection to this reasoning is that the rule of *strictissimi juris* is not a rule of construction.[11] The contract of a private surety, like that of an insurer, is to be construed strictly against the surety, as he is the author of the language.[12] But, when the meaning of the language is once ascertained, the private surety is entitled to stand on the letter of his contract.[13] It is submitted that contracts of guaranty entered into by a corporation for the purpose of gain are as much contracts of suretyship as insurance. It is common ground. But the public demand that these contracts be enforced has rendered inevitable a line of cases which, in effect, decide that this portion of suretyship law is not applicable to the contracts of surety companies.[14] This reasoning is, moreover, consistent with those cases in which the surety escapes liability because the contract or duties of the principal have been so far altered that, to use insurance terms, the breach thereof is no longer a "peril" insured against.[15]

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[4] Champion Ice Mfg. & Cold Storage Co. *v.* American Bonding & Trust Co., 151 Ky. 863; Village of London West *v.* London Guarantee & Accident Co., 26 Ont. 520.

[5] The North British Ins. Co. *v.* Lloyd, 10 Exch. 523; Ham *v.* Greve, 34 Ind. 18.

[6] U. S. Fidelity & Guaranty Co. *v.* First Nat. Bank of Dundee, 233 Ill. 475. *Contra*, Byrne *v.* Muzio, 8 L. R. Ir. 396.

[7] Page *v.* Krekey, 137 N. Y. 307; Daube *v.* Phila. & Reading Coal & Iron Co., 77 Fed. 713; Erickson *v.* Brandt, 53 Minn. 10.

[8] Walker *v.* Holtzclaw, 57 S. C. 459; American Bonding Co. *v.* City of Ottumwa, 137 Fed. 572; Guaranty Co. *v.* Pressed Brick Co., 191 U. S. 416.

[9] Sun Life Ins. Co. *v.* U. S. Fidelity & Guaranty Co., 130 N. C. 129. If the bond in terms covers any employment in which the principal may serve, a change in the principal contract will not release the surety. Fidelity & Casualty Co. *v.* The Gate City Nat. Bank, 97 Ga. 634.

[10] See Guaranty Co. *v.* Pressed Brick Co., *supra*.

[11] Gamble *v.* Cuneo, 21 N. Y. App. Div. 413. See 3 KENT, COMM. 124.

[12] Rindge *v.* Judson, 24 N. Y. 64; Hargreave *v.* Smee, 6 Bing. 244.

[13] Allison *v.* Rutledge, 5 Yerg. (Tenn.) 193; Smith *v.* Montgomery, 3 Tex. 199.

[14] See 19 Green Bag, 613.

[15] Sun Life Ins. Co. *v.* U. S. Fidelity & Guaranty Co., *supra*.